

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

TRACY NEIBERGER,)
Petitioner,)
vs.) CIV-10-1380-F
JAMES RUDEK, Warden,)
Respondent.)

REPORT AND RECOMMENDATION

Petitioner, a state prisoner appearing *pro se*, brings this Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. §2254. The matter was referred to the undersigned Magistrate Judge by United States District Judge Friot on December 28, 2010, for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). The undersigned finds:

(I) That the Petitioner is presently a prisoner in the custody of the Oklahoma State Reformatory, Granite, Greer County, Oklahoma, which is located within the territorial jurisdiction of the Western District of Oklahoma. 28 U.S.C. §116(c).

(2) That the Petitioner demands his release from such custody and as grounds therefore alleges he is being deprived of his liberty in violation of his rights under the Constitution of the United States.

(3) That the court which imposed upon Petitioner the judgment of conviction and sentence under attack was the District Court of Tulsa County, Oklahoma, which is located within the territorial jurisdiction of the Northern District of Oklahoma. 28 U.S.C. §116(a).

(4) The Northern District of Oklahoma, as the place of conviction, and the Western District of Oklahoma, as the place of custody, have concurrent jurisdiction to entertain the application for writ of habeas corpus. 28 U.S.C. §2241(d). However, the Court has discretion to transfer the action to the Northern District of Oklahoma for hearing and determination.

(5) In the interest of justice, the Court should exercise its discretion to transfer the Petition to the Northern District of Oklahoma, where the conviction was entered and state court records and counsel are generally located. 28 U.S.C. §1406(a).

RECOMMENDATION

Accordingly, it is recommended that this Petition for a Writ of Habeas Corpus be transferred to the United States District Court for the Northern District of Oklahoma. The Petitioner is advised of his right to file an objection to this Report and Recommendation with the Clerk of this Court on or before January 24th, 2011, in accordance with 28 U.S.C. §636 and LCvR 72.1. The failure to timely object to this Report and Recommendation would

waive appellate review of the recommended ruling. Moore v. United States of America, 950 F.2d 656 (10th Cir. 1991); cf. Marshall v. Chater, 75 F.3d 1421, 1426 (10th Cir. 1996) (“Issues raised for the first time in objections to the magistrate judge’s recommendations are deemed waived.”).

This Report and Recommendation disposes of all issues referred to the undersigned Magistrate Judge in the captioned matter, and any pending motion not specifically addressed herein is denied.

ENTERED this 4th day of January, 2011.



GARY M. PURCELL
UNITED STATES MAGISTRATE JUDGE